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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) AU5920030365 US1	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>August 2, 2007</u> Signature <u>Cynthia L. Holland</u> Typed or printed name <u>Cynthia L. Holland</u>		Application Number 10/626,194	Filed 7/24/2003
		First Named Inventor FELLENSTEIN	
		Art Unit 2109	Examiner FEARER
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>37,720</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		<u>Rudolf O. Siegmund</u> Signature <u>RUDOLF O. SIEGSMUND</u> Typed or printed name <u>214-231 231-4703</u> Telephone number <u>August 2, 2007</u> Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
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Pre-Appeal Brief Review Statement

The examiner rejected claims 1-27 under 35 U.S.C 103(a) as being unpatentable over Matsliach et al. (US 6,879,994) in view of Monza et al. (US 2004/0,081,183 A1) and in further view of Tamir et al. (US 6,957,390 B2).

a. Claims 1, 11, and 21.

The examiner states that Matsilach discloses the claimed subject matter except for "teaching the type of data provided by the messaging system or providing information for the best time to contact another user."

The examiner states that Monza "discloses a messaging system comprising a self learning component that keeps and monitors historical usage data and uses it to profile users of the system." Specifically, the examiner states that this reads on the claimed "wherein the statistical usage data is adapted to allow the end user to determine a best time to contact the target user for a messaging session by providing a plurality of data regarding the target user's ... the target user's messages sent and received." The examiner cites to Monza paragraphs [0068] and [0160].

Paragraph [0068] identifies a self learning component as follows:

Part of PE component within engine 112 is a self-learning component. The self-learning component enables proactive outbound contacts to be initiated using the most optimum media type and contact parameters to ensure the best change for success of contact and probable response. For example, if a client like a business partner repeatedly does business with center 104 then all of his or her available media types, contact parameters, preferences, rules for etiquette, and normal itinerary, are stored in HDM within facility 114. Also stored in HDM under the same client ID parameters are statistical data regarding hit and miss rates of previous proactive outbound contacts and the result data of those contacts over an extended period of time. Over time, the system "learns" what the most successful proactive contact media types are and when the best times are to initiate the contacts. As more data is compiled more intelligence is gleaned. [0068]

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Paragraph [0068] discloses that engine 112 operates within center 104 and facility 114. These elements are described in greater detail with the Monza specification. Applicant disagrees that Monza paragraph [0068] discloses a messaging system with a self learning component.

First, in Monza the user must be doing business with center 104. (see line 7 of paragraph [0064]). Center 104 is defined in detail in Monza's specification as a Multi-Media Communications Center (MMCC) and is illustrated as "a host of an enhanced object-oriented interaction management platform that is adapted to enable, among other tasks, dynamic management of interactions between entities of MMCC 104 and clients including business partners, suppliers of employees." (Monza, [0040]). MMCC 104 is a complex structure described in detail in Monza's specification.

Second, data is stored in "facility 114" which is defined in paragraph [0054] as "a backend database facility and middleware component 114 that is adapted to warehouse data for MMCC 104." (Monza, [0054])

Third, Monza provides for a "high-performance multimedia queue (HPMMQ) 113" that is "within MMCC 104..." (Monza, [0057]) and "all events including COST events that are processed either by systems or live events are queued therein." (Monza, [0058]) Therefore, applicant submits that Monza's data can only be acquired within its vast, multilayered, and transaction oriented system.

Monza does not specifically disclose identifying the best time for an end user to contact a target user in a messaging system. Monza states, "[o]ver time, the system 'learns' what the most successful proactive contact media types are and when the best times are to initiate the contacts." Monza's "contacts" are for business interactions. See Monza, paragraphs [0024] and [0025] for a summary of steps involved in contacting a client. Thus Monza does not specifically address

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identifying the best time to contact a target user in a messaging system but rather for initiating "contacts" in a business process. Contacts are initiated at the beginning of the business process. It is highly unlikely that an initial business contact in a business process would be initiated by a message in a messaging system. In contra-distinction, applicant's messages are independent of a business process. There can be multiple messages within a stream of communication which are not an "initiation" but rather a continuation. A best time for sending the message is provided by applicant's invention regardless of whether it is an initial or subsequent communication.

Furthermore, paragraph [0160] of Monza discloses capturing data of the business process, but does not disclose capturing data regarding a target user's sending of messages in a messaging system.

At step 503, if the media type of interaction is live voice, interactive text-based, or asynchronous messaging, the interaction content and any results are stored at step 504. At step 505 the business process ensues, meaning that interaction is still ongoing and the purpose of the client has yet to be satisfied. It is noted herein that further routing, re-direction, transfers, and other steps may be part of the process. Further, the entire interaction chain is captured and recorded as it occurs. It is further noted that the end of a process does not necessarily mean the closing interaction of a transaction. The definition of process may include, for example, post-closing operations that still need to be performed. [0160]

Paragraph [0160] of Monza illustrates the way in which Monza's data is intertwined with business processes, and is not directed to a messaging system independent of a complex multi-media system. Applicant submits that the examiner is using hindsight because there is no teaching in Monza to suggest applying the business oriented engine of Monza in conjunction with Matsliach to determine a best time to send a message to a target user in a messaging system.

The examiner states that Tamir discloses "a system that logs client specifics comprising average session duration and begin and complete times." Specifically, the examiner states that

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Tamir reads on the claimed "providing a plurality of data regarding the target user's times for signing in and signing out, the target users average time signed on each day,"

Using the Session Start 304 and Session End 306, the server system can also determine what times the user and application began and completed the client-server session. The server system can thereby determine user-specific statistics including the user session duration and peak time of use, as well as client-specific statistics including client session duration and peak time of use. (9:13-23)

The examiner stated that "it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate logging session times as taught by Tamir et al. with tagging customer preferences as taught by Matsliach et al, as modified by Monza et al., for the purpose of statistical data analysis." But Tamir discloses capturing data regarding use of a server or server application and has nothing to do with messaging systems. Applicant submits that the examiner is employing hindsight to assemble applicant's invention. Tamir is not a proper reference because the data acquired has nothing to do with interactive messaging.

Matsliach et al., Monza, and Tamir—singly or in combination—do not disclose exactly each element of applicant's independent claims.

Respectfully submitted,

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